

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

April 30, 2002

GSBCA 15772-RATE

In the Matter of ACTION CAPITAL CORPORATION

Becky J. Cronister, President of Action Capital Corporation, Atlanta, GA, appearing for Claimant.

James F. Fitzgerald, Director, Audit Division, Office of Transportation and Property Management, Federal Supply Service, Washington, DC, appearing for General Services Administration.

Col. John B. Hoffman, Staff Judge Advocate, Headquarters, Military Traffic Management Command, Department of the Army, Alexandria, VA, appearing for Department of Defense.

NEILL, Board Judge.

Action Capital Corporation (Action Capital) asks this Board to direct the Defense Finance and Accounting Service (DFAS) in Orlando, Florida, to pay \$2,468.47 into Action Capital's account with the Wachovia Bank (Wachovia). These funds were previously paid to Action Capital's account by DFAS via electronic transfer. When DFAS later determined that the funds were paid in error, it requested Wachovia to return them. The bank did so. Action Capital objects to the repayment and asks that we intervene on its behalf and direct DFAS to return the funds. The General Services Administration (GSA) and the Department of Defense (DoD) contend that this Board lacks the authority to resolve this dispute. They ask, therefore, that the case be dismissed. For the reasons set out below, we grant their request.

Background

In 1998, Action Capital entered into a financing arrangement with Heritage Moving and Storage, Inc. (Heritage). Under the arrangement, payments due Heritage for storage services performed under a contract Heritage had with the United States Government were assigned to Action Capital. Heritage, however, subsequently defaulted on its contractual obligations. Its contract with the Government was terminated for default. The contracting

officer subsequently determined that Heritage was in debt to the Government in the amount of \$30,750.90. DFAS was asked to set off against this debt any monies due and payable to Heritage.

Notwithstanding the request for set-off, the DFAS office in Orlando inadvertently made payments under the defaulted contract to Action Capital in the amount of \$2,468.47. The funds were electronically transferred to Action Capital's account with Wachovia. When the error was discovered, DFAS requested Wachovia to return the funds. Wachovia did so without consulting Action Capital. When Action Capital discovered the bank's debit action, it contacted DFAS and requested that the funds be returned. DFAS has refused to return the funds.

Discussion

There are, of course, several issues which surface in a case such as this. One might question the propriety of Wachovia's returning the payments made by DFAS without first conferring with Action Capital. There is likewise a question regarding the propriety of DFAS's insistence on having the funds returned after what may have been an inadvertent waiver of the Government's right to set off. Understandably, GSA has not become involved in these or similar issues and, given the circumstances here, we see no reason why GSA should become involved. In the final analysis, this is not a dispute over transportation charges or payment. Neither DFAS nor Action Capital nor Heritage questions the correctness of Heritage's transportation charges or the amount found to be due and actually paid. Rather, the dispute concerns what was done with the funds after payment was made and credited to Action Capital's account.

The authority delegated to this Board by the Administrator of General Services with regard to Government payments for transportation is an authority to decide, when asked to do so by carriers or freight forwarders, whether determinations made by the GSA on claims filed by those companies are correct. Delegation ADM P 5450.39C CHGE 64 (Aug. 16, 1996) (referencing 31 U.S.C. § 3726(g)(1)¹). GSA and the DoD urge us to dismiss this case on the ground that it does not involve review of any audit or other determination by GSA. They are correct. The relief which claimant seeks here is not within our jurisdiction to grant. If there is no GSA action for us to review, there is simply nothing within our authority to decide. Tri-State Motor Transit Co., GSBCA 14873-RATE, 99-1 BCA ¶ 30,296; Tri-State Motor Transit Co., GSBCA 13826-RATE, 97-2 BCA ¶ 29,064. Accordingly, this case is dismissed.

EDWIN B. NEILL
Board Judge

¹Redesignated § 3726(i)(1) by the Travel and Transportation Reform Act of 1998, Pub. L. 105-264, § 3(a)(3), 112 Stat. 2350, 2353 (1998).